IN THE HIGH COURT OF BOMBAYAT GOA
****

WRIT PETITION NO. 211 OF 2003

Smt. Kishali Gawas, major,
housewife, r/o H.N.245/B
Opp. Swimsea hotel,
Caranzalem, Goa. ... Petitioner

versus

1. Town and Country
Planning Board,
State of Goa, through
its Member Secretary, and

2. North Goa Planning &
Development Authority,
through its Chairman,
Mala, Panaji, Goa. ... Respondents.

Smt. A.A. Agni, advocate for the petitioner.

Shri H. D. Naik, Addl. Govt. Advocate for respondent no.1.

Shri A. P. Lawande, advocate for respondent no.2.

CORAM : F. I. REBELLO, J.

DATE : 12th June, 2003.

ORAL JUDGMENT

Rule. Respondents waive service. Heard forthwith.

It is the case of the petitioner that the structure existed on the land even before the land was acquired by the State Government and, consequently, the respondents would have no jurisdiction to take proceedings under the provisions of the Town and Country Planning Act, 1974. It is contended that the petitioner disputes the contention that the area falls under the land which has been acquired by the State Government.

2. The short question is whether on these disputed questions it was open to respondent no.2 to issue the notice and direct demolition. The order passed by respondent no.2 has been confirmed in appeal by respondent no.2 and consequently, both the orders have been challenged.

3. Respondent no.2 as the Planning Authority within its jurisdiction could have taken action in respect of an illegal constructions done without development permission from respondent no.1. However, when there are disputed questions of fact where it is alleged that the construction itself is in existence for a long time and does not fall in the acquired land, then that will be a matter of evidence and, consequently, it would not have been open for respondent no.1 to pass the impugned order in the manner due and/or for that matter respondent no.1 to confirm the same.

4. In the light of that, considering the controversy involved and the peculiar facts of this case, the petition is made absolute in terms of prayer clause (a). However, it will be open to the State Government whose contention is that the land has been acquired, or respondent no.2, to take appropriate proceedings under the Land Acquisition Act, or under the Land Revenue Code, or any other proceedings. With the above observations, the

petition stands disposed of with no order as to costs.

F.I. REBELLO, J.

mc.